



**Federal Communications Commission
Washington, D.C. 20554**

September 11, 2003

DA 03-2882

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Duane Maynard
Howe Electric, Inc.
4682 E. Olive Ave.
Fresno, CA 93702

Re: Notice of Suspension and of Proposed Debarment, File No. EB-03-IHD-0387.

Dear Mr. Maynard:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your August 26, 2003 conviction pursuant to 15 U.S.C. § 1 for bid rigging.¹ Consequently, pursuant to 47 C.F.R. § 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.²

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,³ your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services

¹ Any further reference in this letter to "your conviction" refers to your August 26, 2003 guilty plea and conviction of this count based on your participation, on behalf of your employer, Howe Electric, Inc., in a "combination and conspiracy to suppress bidding for the West Fresno Elementary School District E-Rate project and to allocate among conspirators the responsibility for supplying goods and services for that project." See *United States v. Maynard*, Criminal Docket No. 1:03cr5325, Information at 2-3 (E.D.Cal. filed August 19, 2003) ("*Maynard Felony Information*"); *United States v. Maynard*, Criminal Docket No. 1:03cr5325, Plea Agreement at 6-7 (E.D.Cal. filed August 26, 2003) ("*Maynard Plea Agreement*").

² 47 C.F.R. § 54.521; 47 C.F.R. § 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 C.F.R. § 54.521).

³ 47 C.F.R. § 54.521(a)(4); *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225-27, ¶¶ 67-74 (2003) ("*Second Report and Order*"); *id.* at Appendix B, 18 FCC Rcd at 9263-65.

through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.⁴ Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the Federal Register.⁵

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the Federal Register, whichever comes first.⁶ Such requests, however, will not ordinarily be granted.⁷ The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.⁸ Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.⁹

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission's rules establish procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.¹⁰ On August 26, 2003, you admitted to participating in a combination and conspiracy with West Fresno Elementary School District representatives, a consultant and others representing potential competitors, on behalf of your employer, Howe Electric, Inc.¹¹ Specifically, you admitted that you and the other co-conspirators combined, conspired, and agreed that: (1) Howe Electric, Inc. would be the successful bidder to provide goods and services for the schools and libraries E-Rate project in the district, while no other co-conspirator companies would bid for the project; (2) certain co-conspirator companies would be Howe Electric's subcontractors; and (3) any competing bids would be disqualified as nonresponsive.¹²

⁴ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. § 254; 47 C.F.R. §§ 54.502-54.503; 47 C.F.R. § 54.521(a)(4).

⁵ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.521(e)(1).

⁶ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(4).

⁷ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

⁸ 47 C.F.R. § 54.521(f).

⁹ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(5), 54.521(f).

¹⁰ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

¹¹ *See United States v. Maynard*, Criminal Docket No. 1:03cr5325, Docket Proceedings (E.D.Cal. filed August 26, 2003).

¹² *See Maynard Felony Information* at 3; *Maynard Plea Agreement* at 6-7. The conspiracy violated the Commission's competitive bid requirements for telecommunications services supported by the schools and libraries E-Rate program. 47 C.F.R. § 54.504.

These actions constitute the conduct or transactions upon which this debarment proceeding is based.¹³ Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.¹⁴ Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the Federal Register.¹⁵ Absent extraordinary circumstances, the Bureau will debar you.¹⁶ Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.¹⁷ If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the Federal Register.¹⁸

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.¹⁹ The Bureau may, if necessary to protect the public interest, extend the debarment period.²⁰

Please direct any responses to the following address:

¹³ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(2)(i).

¹⁴ "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 C.F.R. § 54.521(c). Such activities "include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 C.F. R.] § 54.500 *et seq.*)." 47 C.F.R. § 54.521(a)(1).

¹⁵ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(2)(i), 54.521(e)(3).

¹⁶ *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

¹⁷ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(5).

¹⁸ *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. § 54.521(f).

¹⁹ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. §§ 54.521(d), 54.521(g).

²⁰ *Id.*

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Diana Lee
Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
Room 6-C326
445 12th Street, S.W.
Washington, D.C. 20554

If you submit your response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address:

Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418-1420 or by e-mail at diana.lee@fcc.gov. If Ms. Lee is unavailable, you may contact William Davenport by telephone at (202) 418-1420 and by e-mail at william.davenport@fcc.gov.

Sincerely yours,

Maureen F. Del Duca
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Kenneth Alan Reed, Law Office of Kenneth Alan Reed
Kristy Carroll, USAC